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APPLICATION OF SOUTHWESTERN § BEFORE THE STATE OFFICE  
ELECTRIC POWER COMPANY FOR § OF  
AUTHORITY TO CHANGE RATES § ADMINISTRATIVE HEARINGS

**SOUTHWESTERN ELECTRIC POWER COMPANY'S OBJECTIONS TO  
SIERRA CLUB'S SEVENTH SET OF REQUESTS FOR INFORMATION**

Southwestern Electric Power Company (SWEPCO) objects to Sierra Club's Seventh Set of Requests for Information (RFIs), Question Nos. 7.1, 7.3, and 7.13 because the requests seek irrelevant information and are not calculated to lead to the discovery of admissible evidence in this proceeding.

**I. NEGOTIATIONS**

SWEPCO received Sierra Club's Seventh Set of RFIs on May 5, 2021. Counsel for SWEPCO and Sierra Club have attempted to negotiate these objections diligently and in good faith. The negotiations were unsuccessful. In accordance with SOAH Order No. 2, these objections are timely filed.

**II. RESERVATION OF RIGHTS**

Based on diligent inquiry, SWEPCO believes that all necessary objections have been raised in this pleading. SWEPCO does not; however, waive its right, if documents are subsequently found that are responsive to these requests, to claim that such documents are privileged if such an objection is determined to be appropriate.

**III. OBJECTIONS**

**Requests for Information**

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- 7.1 Refer to the Rebuttal Testimony of Mark A. Becker at page 9.
- a. Provide all communications with the Arkansas Electric Coop Corp regarding the evaluation or decision to retrofit of Flint Creek to comply with the CCR or ELG rules.
  - b. Provide all communications with U.S. EPA regarding SWEPCO's evaluation or decision to retrofit of Flint Creek to comply with the CCR or ELG rules.
  - c. Provide all of SWEPCO's Capital Improvement Approval Requisitions for the CCR or ELG projects.
- 7.3 Refer to SWEPCO response to SC 1-9 Attachment 1. Provide the CCR capital expenditures in the years they were incurred for the CCR and ELG projects.
- 7.13 Refer to SWEPCO response to SC 2-17, Attachment 1.
- a. Explain why the total Flint Creek project cost in this attachment differs from the total project cost on SC 1-9, Attachment 1.
  - b. State the amount of each of the CCR/ELG and Pond Closure costs that were included in the test year rate base.

### **Objection**

SWEPCO objects to these requests because they seek information that is irrelevant and outside the scope of permissible discovery.<sup>1</sup> The Commission's rules define the scope of permissible discovery: "Parties may obtain discovery regarding any matter, not privileged or exempted under the Texas Rules of Civil Evidence, the Texas Rules of Civil Procedure, or other law or rule, that is relevant to the subject matter in the proceeding."<sup>2</sup> Information is relevant to the subject matter of a proceeding if the information "has any tendency to make a fact more or less probable than it would be" without the information and that "fact is of consequence in determining

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<sup>1</sup> See Tex. R. Civ. Proc. 192.3(a); 16 TAC § 22.141 (noting scope of discovery to the subject matter in the proceeding); *In re Master Flo Valve Inc.*, 485 S.W.3d 207, 213 (Tex. App.—Houston [14th Dist.] 2016, no pet.) ("Discovery requests must be limited to the relevant time, place and subject matter.").

<sup>2</sup> 16 TAC § 22.141(a).

the action.”<sup>3</sup> Although the scope of discovery in Commission proceedings is broad, requests must show a reasonable expectation of obtaining information that will aid in the dispute’s resolution.<sup>4</sup> Therefore, discovery requests must be reasonably tailored to include only relevant matters.

As explained in SOAH Order No. 7, the retrofitting of SWEPCO’s Flint Creek plant for continued operations in compliance with the Coal Combustion Residuals (CCR) and Effluent Limitations Guidelines (ELG) rules is not relevant to this proceeding because that decision to retrofit Flint Creek was made after the conclusion of the historical test year and the costs associated with that decision are not being reviewed for recovery in this case.<sup>5</sup> Here, Sierra Club seeks information unrelated to any projects identified for inclusion in SWEPCO’s cost of service in this case or to any particular investments that have been placed in service. The information Sierra Club seeks is therefore not intended to aid the resolution of any matter at issue in this case. Accordingly, the requests are not reasonably calculated to lead to the discovery of admissible evidence.<sup>6</sup>

The information sought in Sierra Club 7.1 refers to page 9 Mr. Becker’s rebuttal testimony. This rebuttal testimony specifically addresses and responds to Section 5 of Devi Glick’s testimony that was struck pursuant to SOAH Order No. 7.<sup>7</sup> This RFI requests communications and documents concerning the decision to comply with CCR or ELG rules, the decision to retrofit Flint Creek, and approval requisitions for CCR or ELG projects. But as recognized in SOAH Order No. 7, the testimony this RFI is based on is not relevant to this proceeding because it concerns a

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<sup>3</sup> Tex. R. Evid. 401.

<sup>4</sup> *In re Nat’l Lloyd’s Ins. Co.*, 532 S.W.3d 794, 808 (Tex. 2017) (quoting *In re CSX Corp.*, 124 S.W.3d 149, 152 (Tex. 2003) (orig. proceeding)).

<sup>5</sup> SOAH Order No. 7, at 6 (April 27, 2021) (granting SWEPCO’s objection and motion to strike Section 5 of Devi Glick’s testimony).

<sup>6</sup> Tex. R. Civ. Proc. 192.3(a).

<sup>7</sup> See Rebuttal Testimony of Mark A. Becker, Section IV (addressing “SWEPCO’s Analysis Supporting CCR/ELG Retrofit of the Flint Creek Plant (Glick Testimony Section 5)”).

decision to retrofit Flint Creek that was made after the conclusion of the historical test year and the costs associated with that decision that are not being reviewed for recovery in this case.<sup>8</sup> Accordingly, and consistent with this order, SWEPCO does not intend to offer Section IV of Mr. Becker's testimony into evidence addressing the testimony struck pursuant to SOAH Order No. 7.

On the same basis, Sierra Club's 7.3 and 7.13 are not tailored to address matters relevant to this proceeding. Sierra Club 7.3 requests additional information pertaining to CCR and ELG project expenditures. Sierra Club 7.13 requests further information from the SWEPCO concerning the Flint Creek retrofit and project costs. These requests seek information that is not related to SWEPCO's request for relief in this case, does not bear on a fact of consequence in this case, and is beyond the scope of this proceeding. Simply put, the information sought in RFIs 7.1, 7.3, and 7.13 is irrelevant, beyond the scope of this proceeding, and is not intended to aid the resolution of any matter at issue in this case. Accordingly, these requests are not reasonably calculated to lead to the discovery of admissible evidence.<sup>9</sup>

#### IV. CONCLUSION

For the foregoing reasons, SWEPCO respectfully requests that its objections to Sierra Club's Seventh Set of RFIs be sustained. SWEPCO further requests any other relief to which it may be justly entitled.

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<sup>8</sup> *Id.*

<sup>9</sup> Tex. R. Civ. Proc. 192.3(a).

Respectfully submitted,

Melissa Gage

State Bar No. 24063949

Email: [magage@aep.com](mailto:magage@aep.com)

[aepaustintx@aep.com](mailto:aepaustintx@aep.com) (Service)

Leila Melhem

State Bar No. 24083492

Email: [lmelhem@aep.com](mailto:lmelhem@aep.com)

[aepaustintx@aep.com](mailto:aepaustintx@aep.com) (Service)

400 West 15<sup>th</sup> Street, Suite 1520

Austin, Texas 78701

Telephone: (512) 481-3320

Facsimile: (512) 481-4591

**AMERICAN ELECTRIC POWER SERVICE  
CORPORATION**

William Coe

State Bar No. 00790477

Email: [wcoe@dwmlaw.com](mailto:wcoe@dwmlaw.com)

Kerry McGrath

State Bar No. 13652200

Email: [kmcgrath@dwmlaw.com](mailto:kmcgrath@dwmlaw.com)

Patrick Pearsall

State Bar No. 24047492

Email: [ppersall@dwmlaw.com](mailto:ppersall@dwmlaw.com)

Stephanie Green

State Bar No. 24089784

Email: [sgreen@dwmlaw.com](mailto:sgreen@dwmlaw.com)

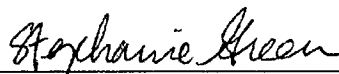
P.O. Box 1149

Austin, Texas 78767

Telephone: (512) 744-9300

Facsimile: (512) 744-9399


**DUGGINS WREN MANN & ROMERO, LLP**

By:   
Stephanie Green

**ATTORNEYS FOR SOUTHWESTERN  
ELECTRIC POWER COMPANY**

**CERTIFICATE OF SERVICE**

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on May 12, 2021, in accordance with the Second Order Suspending Rules issued in Project No. 50664 and Order No. 1 in this matter.

  
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Stephanie Green